

Attorney Docket No.: 0120101
Application Serial No.: 10/054,359

REMARKS

In the Office Action of March 27, 2006, the Examiner has stated that the pending claims of the present application fall within four (4) groups of distinct inventions, as follows:

- Group I: Claims 1, 4, 6-9;
- Group II: Claims 11-13;
- Group III: Claims 14-27; and
- Group IV: Claims 28-34.

A. Applicants' Express Election and Traverse Under MPEP §818.03

For the purpose of being responsive to the Examiner's request in the Election/Restriction Action, and as required by MPEP §809.02(a) and §818.03, applicants hereby elect, *with traverse*, Group III containing claims 14-27, for examination on the merits.

Applicants respectfully submit that according to MPEP §803, the two criteria for a proper requirement for restriction are that (1) The inventions must be independent (see MPEP §802.01, §806.04, §808.01) or distinct as claimed (see MPEP §806.05 - §806.05(i)); and (2) There must be a serious burden on the examiner if restriction is required (see MPEP §803.02, §806.04(a) - §806.04(i), §808.01(a), and §808.02). As such, applicants *traverse* the Examiner's restriction requirement and the grouping of the claims into four (4) "patentably distinct" species as discussed below.

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1. There Are No Independent Inventions

Applicants respectfully submit that, in the present application, the species of Groups I, II, III and IV identified by the Examiner are not independent.

The pending claims of Groups I, II, III and IV are not directed to different “combinations not capable of use together, having different modes of operation, different functions or different effects.” See MPEP §806.04 which recites, by way of example, that an article of apparel such as a shoe is independent from a locomotive bearing, or that a process for painting a house is independent from a process for boring a well.

The pending claims of Groups I, II, III and IV of the present application are related to generating a head related transfer function. Applicants respectfully submit that none of these claims is directed to subject matter that can be deemed as an independent invention within the meaning of MPEP §806.04.

According to MPEP §806.04(e), the species are independent only when there is no relationship between them. In the present application, there is in fact a strong relationship between the above-cited independent claims, as they all relate to generating a head related transfer function. In other words, the claims of the present invention do not have “mutually exclusive characteristics” as required for a proper restriction requirement under MPEP §806.04(f).

For example, system claims 28-34 of Group IV have limitations similar to those of claims 14-20 and 21-27 of Group III. There is, therefore, no reason whatsoever that claims 28-34 should be placed in a different group than claims 14-20 and 21-27. As another example, claims 11-13 and claim 14 share similar elements, such as “averaging the converted sets of head related

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transfer functions to generate one average set of head related transfer functions; and decimating the average set of head related transfer functions to fit a filter engine of a target system.”

2. There Are No Distinct Inventions

The pending claims of Groups I, II, III and IV and their related disclosure in the present application are not directed to distinct species as defined by MPEP §806.05, since, for example, there are no process claims that can be used to achieve a structure different from the claimed structure. For example, as stated above, system claims of 28-34 include similar limitations to method claims 14-20. Furthermore, even if applicants were to file divisional applications directed to the three (3) additional species identified by the Examiner for pending claims of Groups I, II and IV, “IT STILL REMAINS IMPORTANT FROM THE STANDPOINT OF THE PUBLIC INTEREST THAT NO REQUIREMENTS BE MADE WHICH MIGHT RESULT IN THE ISSUANCE OF TWO PATENTS FOR THE SAME INVENTION.” See MPEP §803.01 (capitals in original).

3. There Is No Serious Burden For Prior Art Search

Furthermore, the MPEP requires that there be a serious burden on the examiner if restriction is required (see MPEP §803.02, §806.04(a) - §806.04(i), §808.01(a), and §808.02). MPEP §803 emphasizes that: “If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.” Applicants respectfully submit that no additional burden is imposed on the Examiner to conduct a prior art search for pending claims of Groups I,

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II and IV, since such prior art search should be directed to a search for head related transfer function, and the claims share some similar limitations.

Even more importantly, the Examiner has already conducted a search and issued a first substantive office action. In fact, the Examiner has already examined and indicated allowance of claims 14-34, and now the Examiner is splitting claims 14-34 into two distinct groups. In addition, the Examiner had already examined claims 1-13, and stated that dependent claims 3, 6-7 and 11-13 would be allowable if rewritten in independent form. Now, after placing the claims in condition for allowance, the Examiner has grouped claims 11-13, which depended from claim 1, and which were simply amended to be in independent form, in a distinct group from claim 1. Indeed, in the present case, there is no burden on the Examiner where claims 14-34 have already been allowed and claims 1, 4, 6-9 and 11-13 have already been examined and indicated to be in condition for allowance.

Accordingly, applicants respectfully request a notice of allowance for all pending claims. In the alternative, applicant requests allowance of claims 11-34, and at the very least, allowance of claims 14-34.

B. Conclusion

In light of the above reasons, applicants respectfully traverse the Examiner's restriction requirement, after election of claims 14-27 of Group III, and respectfully request that claims 1, 4, 6-9, 11-13 and 28-34 also be allowed as part of the present application. In the unlikely event that the Examiner maintains the present restriction requirement, as required by MPEP §809.02(a) and

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§818.03, applicants have made a provisional election of Group III (i.e. claims 14-27) for prosecution in the present application.

The Examiner is invited to contact the undersigned for any comments or discussions regarding the present application.

Respectfully Submitted,
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April 19, 2006
Date

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